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10/646,499	08/22/2003	Daniel S. Choi	WEB-927	9670
61215 7590 05/16/2007 DAVID I. ROCHE BAKER & MCKENZIE LLP 130 EAST RANDOLPH DRIVE CHICAGO, IL 60601			EXAMINER PUROL, DAVID M	
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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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10/646, 499

EXAMINER

ART UNIT

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Commissioner for Patents

Newly submitted claims are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

- I. Previously submitted claims 1-26, drawn to a shelf, classified in class 211, subclass 134.
- II. Newly presented claims 27-44 drawn to a barbecue grill assembly, classified in class 126, subclass 41R.

Inventions II and I are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed. It is noted that claims 27,28 drawn to the combination, do not require a shelf having a bottom wall with sidewalls depending therefrom, as required by the originally presented subcombination claims. As such claims 27,28 are evidence that the combination does not rely upon the specific details of the subcombination for its patentability. The subcombination has separate utility such as a shelf in a kitchen cabinet. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 27-44 have been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

The amendment filed on February 27, 2007 canceling all claims drawn to the constructively elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03).


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Primary Examiner
Art Unit: 3634